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CRIME CONTROL AS INDUSTRY

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Lister Sinclair

Good evening; I'm Lister Sinclair and this is *Ideas*. With this program we begin a new series called "Crime Control as Industry." It consists of a conversation in three parts with Norwegian thinker Nils Christie, a professor of criminology at the University of Oslo. Professor Christie is the author of twelve books on subjects ranging from concentration camps to drug policy, to the nature of community.

Since 1981, when he published a work called *Limits to Pain*, he's occasionally chosen to avoid the distortions of translation and address an international audience directly by writing in English. In *Limits to Pain*, Christie faces the paradox of avowedly humane societies inflicting the pains of imprisonment on their citizens, and he takes, in his own words, "a moral stand in favour of creating severe restrictions on the use of man-made pains in means of social control."

This year, after more than a decade, during which many of the societies he tried to address have gone in the opposite direction, Nils Christie has published a new book called *Crime Control as Industry*. The sub-title is a provocative question: *Towards Gulags, Western Style?* In this book, Christie asks whether Western societies might now be on the brink of accepting increasingly large numbers of prisoners as a kind of "final solution" to unemployment, drug abuse, and other unmanageable social tensions and inequalities. That question is our melancholy theme in these three *Ideas* programs, as Nils Christie talks about why crime is an endless resource in modern societies and why law must become an expressive cultural institution and not just a machine pretending to deliver just measures of pain. "Crime Control as Industry" is prepared and presented by David Cayley.

David Cayley

Present figures are conventionally measured in prisoners per hundred thousand of population. In 1850, the United States had considerably less than fifty per hundred thousand; in 1930, around a hundred; and in 1970, after a decade of decline, around a hundred still. But in that year an astonishing increase began. By 1979, the figure had reached two hundred and thirty; by 1989, four hundred and twenty-six; and by 1991, five hundred and four. One point two million Americans are now in prison. When those on probation or parole are added, the total number

under some sort of legal control comes to four and a half million people. Since 1970, the number of Americans held prisoner has quadrupled. Curiously, during the last phase of this increase, there was an equally precipitate decline in the number of prisoners in what was then the Soviet Union. In 1979, the USSR had six hundred and sixty prisoners per hundred thousands; in 1989, only three hundred and fifty-three. Poland's figures fell even more dramatically: from three hundred to just over one hundred. Canada, just for purposes of comparison, had a modest increase in the 1980s: from a hundred to a hundred and eleven. This is relatively high by European standards—twice Norway's rate, for example—but still only a fifth of the American level. The rate of imprisonment in the U.S.A. troubles Nils Christie greatly, as does the decay in American jurisprudence, which he thinks it demonstrates. He comes from a smaller society that has kept relatively few people in prison during the last hundred years. But Norway today faces the same constellation of troubles as all Western societies: budgets shrink, unemployment grows, the fiscal and moral basis of the welfare state erodes. And as economies are streamlined for the universal race, a new class of useless and unwanted people is constituted. Prisons, meanwhile, are a lucrative business: building them, staffing them and supplying them with the latest in weaponry and surveillance techniques generates jobs and money. Prisons also provide a sense of safety for a citizenry increasingly frightened by the feeling of living amongst potentially violent strangers. Under these circumstances, Christie asks, mightn't other countries soon follow the American lead? The U.S. has power, prestige, influence, and even yet, a certain glamour. And to a Norwegian it's hardly an alien land, since there are as many Norwegians there as in Norway. But will citizens accept the necessity of keeping more people in prison for more of their lives? Recently, I spent a couple of days with Nils Christie at his institute in Oslo and this was the question with which we began our recorded conversation. It is his view, he told me, that it becomes easier to define acts as crimes demanding punishment when we know little of the circumstances and motives of the people doing those acts, and this conviction of his, he said, had roots running all the way back to a study he did in his student days.

Nils Christie

The first thing I did as a very, very young student, actually, but we were so few at that time so that the

professor in penal law asked me if I would try to describe very sad events in Norway during the Second World War. The story I had to do Hitler's program of *Nacht und Nebel*, which means night and fog. The idea Hitler and his collaborators had was that to create terror in the occupied areas they moved . . . they took people they had captured and moved them to other countries without telling where they went. So what happened here in Norway in 1942 was that we got a huge group of Yugoslavian partisans captured by the Germans and put in prison camps up in the north of Norway, under terrible conditions, as bad as in the German concentration camps, as the worst of the German concentration camps. During one year, some seventy per cent of them died. And in this terrible place, there were several hundred Norwegian guards and just after the Second World War, some fifty Norwegians were actually found guilty in having killed or maltreated these Yugoslavians. So not only were they passively watching them, but they were actively killing them. And Ande Ness, [?] who had been very active both during the war and just after, said that this is a terrible problem, we have to understand how could they do it. And I was happily enough completely inexperienced so I didn't know quite what to do, but we, with great optimism, I started to read some of the cases and then I started to talk with these former guards, and I talked with nearly all the fifty who had killed, maltreated, and I talked with a sample who in the same situations had not killed and maltreated. And what I tried to get at was what sort of picture did they have of their prisoners. And those who had killed and maltreated had without exception been distant from the Yugoslavians. After awhile, it turned out that one indicator, and I included that in my questions all the time, did you ever see any pictures? And the killers had never seen pictures, while the non-killers said, oh yes, they showed me pictures of the family and they were sitting on the balcony and looked rather nice, etc., etc. So you see, the closeness in the experience was so much greater. And I got it confirmed. I have the book from one of these people in my shelves behind you there. It was a Yugoslavian. I met him in Yugoslavia and also in Norway. After some years I wrote a little book of this, which was translated into Yugoslavian. And he come and he told me how he had survived in the camp, which confirms my little story. He had during one of his first days in the camp found a little dictionary, a German-Norwegian dictionary, and then in the nights he had used his ration of oil in making a little lamp, so he had learned to be able to speak Norwegian. And one day

they had a Norwegian guard in the front and one in the back and measured out, they were building a road up in the north. They call that road still the Blobe [?] Road, and the man behind the guard behind asked the man in front, "Do you have a match?" And the man in front said, "No, I have none." And then the Yugoslavian said, in Norwegian that "I have a match." And he said, from that day my chances for surviving was much, much greater. He moved away from being sort of unbelievable, strange animal into a ordinary human being. But, you see, I want to defend those who killed by saying that they had difficulties. They were ordinary—that's important for me, and I was absolutely assured of that—they were ordinary Norwegians. The killers in the concentration camps were not monsters, they were decent, ordinary people. But here came this group and it was in the same conditions as the groups in all concentration camps: very, very bad conditions. You dehumanize people bodily—you have diarrhea, you can't keep your bladder, you can't keep anything because you are so sick. But here you can see again how human beings can interpret: the killers said they were dirty, they didn't even take off their trousers when they needed to go to the toilet, while the non-killers said, they were sick, they couldn't help it. The killers said, you could see the lice move on them; and the non-killers said, they hadn't been able to wash for months. Infections, dirtiness, misery—it can be interpreted as indicators of badness, or indicators of sickness. And also socially, it turned out that those who had been close enough, they understood something of the social phenomena of living in a concentration camp, but the inexperienced didn't understand it. Another . . . I remember it so well. Several of them, several of the killers said, they were another breed, they were completely different from ordinary people; you should have seen them: they could look at one of their fellows that he was killed, they just continued talking; that if you gave one of them a little light below in his face, then they started crying. But several of the observers of concentration camps, particularly Bruno Bettelheim, had described this phenomenon. If what happens to you or to your friends is in a way outside of your ordinary framework for experiences, then you don't react. You can't react, it's so far that your best friend is just killed, you continue walking; that to get that light below in your face is a sort of inside the framework of what you have experienced in your early life, and you break down in despair over this insult. And again, you had to understand a lot to be able to interpret what happens. So in the killers' camp in a way it built up an

understanding of those they later killed or had already killed as being outside the framework for ordinary people, and then you can kill, you did kill people. You killed something animal or you behaved worse than if they had been ordinary animal because these were bandits from the Balkans, as the Germans told them, while those who had been close, seeing the pictures, listened to their interpretation, being able to connect it to their own existence, were thereby also prevented from doing the situation even worse than it was. I don't say they behaved as heroes, rescued them, etc., etc., but they, as far as they can see, most of them behaved decently. It has influenced my whole life with experience and is behind a lot of what I'm trying to do in understanding what is called "crime" and also in understanding what to do and what to do to prevent certain acts.

David Cayley

This preoccupation extends right into Nils Christie's present work, the book under discussion here, *Crime Control as Industry*. In this new book, Christie draws on a work published in 1989 by sociologist Sigmund Baumann, called *Modernity and the Holocaust*. Holocaust studies, Christie says, can be divided into three stages. The first stage emphasized deviant individuals, authoritarian personalities in the famous formulation of Adorno [?] and his colleagues; the second: deviant social systems; works of the third and current stage, like Baumann's, emphasize how typical Germany was. Baumann's book, according to Christie, is about the social production of moral indifference in modern societies. "It treats the Holocaust," in Baumann's own words, "as a rare yet significant and reliable test of the hidden possibilities of modern society."

Nils Christie

The question by Baumann is reformulated not, how could it happen, but it will be much more, why hasn't it happened more? There is nothing in our type of society that give any guarantee that it will not happen again and again. The German experience, Baumann would say, is not so much that there were created out of anti-Semitism, out of a special ideology of Nazis, it's much more a result of German bureaucracy, German signs, their ability to be rational, their ability to use the tools of barbarity. And what becomes unpleasantly clear, not only by Baumann now but also by several students, particularly of the medical profession, is that to a large extent what

happened in the Holocaust was made possible by professional perfection. An important book here is Robert J. Lifton [?] on the Nazi doctors; it has the subtitle *Medical Killing and the Psychology of Genocide*. Medicine was helpful from the very first stage by having a training arena for extermination. It was first those physically handicapped who were supposed to get a life not worth living. Hitler sent a special representative to inspect one such case and they decided that here it would be okay to kill, but they didn't call it "kill" of course, they called it something nice. And then you get the mentally retarded who was not worth to be preserved; then you got the insane; then you got the people with social problems, with alcohol problems, and people called "psychopaths"; and then you get the race. So it all fitted into a sort of medical analogy, where the German body had to be preserved, the body of the nation. And you know from medicine that if you have sick parts, you cut them off, and a body becomes healthy again. And here you had all these categories of not-wanted people and you have a rating scale also who are the best people, and the medical profession was put then in operation to in a way "purify" the nation. And even in the very concrete running of the camps, according to Lifton and many other reports, medical personnel took a very active part: On the platform when the train arrived, here were always medical personnel present; a little nod and the person would be acceptable for work, a nod in the other direction, that person would go to extermination during the next day. Again you can see the importance of the meaning you give. It was seen as a medical diagnostic activity, so doctors had to attend. If doctors had not attended, it would have been killing. No, it was diagnostic and a medical cure of the ...[?] body. Students were visiting the camps as they would have visited the wards in the hospital and examples of bodies went to the German universities and, according to statements, they are still in use some places. And if you're [?] taking this away, it wouldn't have been quite that easy to do it. So the shocking thing is the ease of that whole operation and also that it shouldn't have been done to that extent if it hadn't been governed by rational thoughts and their well-organized bureaucracy.

David Cayley

But how is that germane toward our contemporary situation? Just because we live in a technological society and value rationality and live amongst virtual strangers, is that enough for you?

Nils Christie

Yes. My anxiety, if that is the word in English, would be the question, what will be the next example and, since I've been working ...[?] with concentration camps for my whole life, I cannot escape then again looking into what we are doing in the penal institutions. And, if we look at that both on the basis that closeness in the local communities, all our Western world, are in a way dissolving, the tools for handling large numbers of people are getting more and more efficient, the underclass, or the d...[?] classes, are growing, since industrialization has now come to a point where unemployment is so great, this, combined with our very stern policy against drug use, means that the prison population in the industrialized societies seems to be growing. It's growing in Europe—there are exceptions to it—but it is steadily growing these last ten years, and then the sort of the industrial leader of the world, the United States, there the prison population is exploding. It is mainly unbelievable what is happening just now. I mean in that country it is now more than one million people in prison. They have about ten times as many prisoners as we have in Norway and they have four or five times as many as you have in Canada. And it is just increasing and increasing—it seems to be no end to it. And I think there are several reasons for saying that. It is not improbable that we will be forced to call what is happening in several industrialized countries for re-establishment of the idea of *gulags*.

David Cayley

Gulags is a strong word, with powerful associations. But Nils Christie has his reasons for using it. By evoking the former Soviet Union, where we get the term, it draws attention to the fact, always more obvious in the case of an enemy, that prisoners are part of a system of social control and not just a reaction to a naturally occurring phenomenon called "crime." The strength of the word also highlights radically new circumstances. The most important of these circumstances, for Nils Christie, include the decline of the welfare state as a moral community, the war of drugs as a disguised form of social control, and the political co-optation of the institution of law. He also wants to point to the refinement of techniques of surveillance and control and, finally, to the economic dynamism of the control industry itself.

Nils Christie

Prison means work and money to a lot of people. It has developed into an enormous industry, the prison industry. It's an industry in building prisons, as you can see in the American journals of that type—"You phone, we build. Within six months you have your prison"; or: "We provide telephones that are perfectly suited for prisons"; or: "We provide the necessary weapons" or "We provide the food," "We provide the medical service," etc. So, in the building and providing and of course also in the jobs of running the prisons, these are great invested interests. And, secondly, of course that in societies they have unemployment and then you have great class differences, and then you maybe don't look at those at the lower end of the class scale as ordinary people, or at least you don't identify seeing them as people suffering the way you are suffering, behaving the way you are suffering, behaving the way you are behaving, etc., then you are both afraid of that class and tempted to apply force, and then that force at the same time gives jobs, then there's a great temptation just to continue. And when then, as the last element in this modern technology enters, when you have this fantastic electronic industry where you can put on your prisoners inside the prison such . . . what do you call it in English? I don't quite remember, but bands around . . .

David Cayley

Wristbands.

Nils Christie

Wristbands, yes, and other bands, so that you don't even need to talk to them, you don't even ask them what their names are or what numbers they have, because you can read it electronically. But you know it from the supermarkets. It's the same principle: you put on everything you pay for and you put the same things on the person, then he stops to be a person and becomes a commodity. And then again we're back to the concentration camp. This is not a human being, it is a number that just passes that point of control. How can you expect that ordinary brakes put on ordinary people's behaviour vis-à-vis other ordinary people? How shall that be activated when you create social situations like this? I think we have created situations perfectly suited to be called "*gulags*," and I can find no good reason except that the United States might run completely out of money for stopping this.

David Cayley

In his book *Crime Control as Industry*, Nils Christie gives a number of hair-raising examples of what he calls "the technological push in the prison industry." First, there are the ads from journals like *Corrections Today*, ads whose tone makes it clear that what is being sold are industrial products which can be hyped in the same way as dog foods or deodorants. "If feeding a captive audience is part of your job," reads one, "then talk to the food-service specialists who know how to do justice." "Some inmates would love to stab, slash, pound, punch and burn you," says another, "but they won't get past your S-T-A-R, Special Tactical Anti-riot Vest." Or, there's "Cap Stun Two, proven effective against drug abusers and psychotics." Then there are the prisons, like Pelican Bay, which the governor of California described as "a state-of-the-art model for the rest of the nation," when he opened it in June of 1990. This was how the *Los Angeles Times* described the place: "Pelican Bay is entirely automated and designed so that inmates have virtually no face-to-face contact with guards or other inmates. For twenty-two-and-a-half hours a day inmates are confined to their windowless cells. They don't work in prison industries, they don't have access to recreation, they don't mingle with other inmates; they're not even allowed to smoke because matches are considered a security risk. Inmates eat all meals in their cells and leave only for brief showers and ninety minutes of daily exercise. They shower alone and exercise alone in miniature yards of barren patches of cement enclosed by twenty-foot-high cement walls covered with metal screens. The doors to their cells are opened and closed electronically by a guard in a control booth." And finally, Christie points to a new institution with possibilities just as sinister as the totally managed environment of Pelican Bay, the so-called home prison.

Nils Christie

You're tagged with some electronic ankle bracelet, if that is the word, and if you leave your house, a sign is broken, a connection is broken to a telephone and it is cleared down in the police station that you have left your house. But now that is an old-fashioned device. In the technical journals of the United States you can now find advertisements of much more sophisticated measures, because home prison is of course not satisfying: you can only imagine what some of these terrible people are doing in their homes; they might even drink. So the new technical device is special machinery that call you up two

or three or four times a day and you have to take the telephone and that you have a television camera looking into your face so that they can see that you are you, and you have to talk so they can listen that it's your voice coming there, and you have to breathe into a machinery which immediately analyzes the air you are sending out, if you have been drinking. And I'm not very much in doubt that within a short time you also will have to pee while the television camera is watching that you are doing it and it will automatically be sent over telephone the results of the test, if you have used drugs or not. So, it is increasingly possible to control a large amount of the population and it is in many people's interests to do so.

David Cayley

Is this already happening?

Nils Christie

Oh, yeah. Home imprisonment is in full [?] use: thirty, forty thousand in the United States, some in England—it is spreading, this idea, but not very fast—are in home prison with this electronic device. It's ...[?] story about it, which I hope is true, but I can't tell it more than as an illustration of one hopeful aspect of humanity, and that is of these poor people who have to keep service on the machinery. A big firm around this home-prison machinery, and they send electronic workers to the homes of these people who are in home prisons, and it turned out that when they went there, they used more and more time. First they might be able to cover ten clients a day, but soon there were seven and some of them were down to five. So this was uneconomic, and they investigated and they found out that the reason was that these technicians coming there found deeply suffering people in trouble, and they couldn't limit their task to fixing the machinery, they had to go into the human person and stay there for awhile, so they come in trouble. So that's the little piece of hope in it.

David Cayley

As it stands right now, in the United States and in the United Kingdom, people are being sentenced to home incarceration?

Nils Christie

Yes.

David Cayley

In what circumstances would such sentences be given?

Nils Christie

Oh, it might probably be not extremely serious and it might be drunken driving, for example, or it might be a more minor theft, minor embezzlement, etc., and you might be sentenced—I saw one report the other day—into two years of home imprisonment, but you might also then program the equipment so that you are able to leave for doing your work and coming back at four o'clock and not leaving the house from that time and until you next go into work. So you can find all sort of refinement in the mechanism. And then you can of course also design it so that you have the same report system at your place of work, so you're free half an hour until you reach your place of work and then it will be reported if you do not appear there. So there are no limits to . . . except the money end. Of course, this is very, very much cheaper than having people in ordinary prisons and maybe even more pleasant, seen from the prisoner's point of view. I don't dare to think what the rest of the family think. And what does this mean for family life? And what does it mean to be at home, when the home literally has become the prison?

David Cayley

One of the reasons why Nils Christie so fears the expansion of prisons is his vivid awareness of the potential for such growth. In modern societies, he claims, crime is in virtually unlimited supply: it can be made to appear and disappear almost at will by the police, the media, and other authorities. And under these circumstances, there is no natural limit to the growth of prisons.

Nils Christie

In relatively close-knit societies there are certain things who are terribly bad and they will be seen as "really bad," independent if it was my son or my wife or my husband who did it. But then there are so many acts who do not necessarily have to get the label "criminal," but in a society where people do not know each other, there will be such an abundance of acts that can be given that label of being criminal, so they come, so to say, in addition to the natural crimes. You get an endless amount of other acts that also could be called crimes, and this in contrast then to close-knit societies where something that was terrible but the rest of it could be understood. With us, it is so much that not necessarily need to be understood, so

there is no limit to what could be taken in as seen as criminal at the same time as we have a capacity to do something is so much more than we had before. And we have an interest in doing it since some people earn money on doing it. So thereby we get this crime-controlling industry, which is in the extremely happy situation that there is no problem with the raw material, one of the few industries where this is the case. And I think this creates a really dangerous situation.

David Cayley

This situation is aggravated, in Christie's view, by changes in the institution of law. At the same time that sociologists like him have been trying to establish the idea that in modern societies crime is a socially constructed category, and not a natural fact, law makers have tended to move in the opposite direction. The United States, for example, has created a sentencing commission whose job it is to specify precisely and, regardless of circumstances, just how much pain is to be meted out for each criminal act, as if these acts had an independent and unvarying meaning. The scales of justice, Christie says, have given way to a computer.

Nils Christie

Some legal systems are deteriorating very rapidly, and I think that is a maybe a bit intentionally ugly word. You could also say they were "adapting" to modernity very rapidly. I'm particularly thinking on types of society where they more and more make sentencing into a sort of automatic process, not to find guilt, even though that is mostly decided through some sort of plea bargaining and by confession by the offender, but the decision of how much suffering is to take place is now so clearly specified either by the law-makers, the parliamentarians, or sentencing boards, that there is no question, it's a very simple thing to do. It is nearly to touch some few buttons and then you find twenty-four months of imprisonment or life. And this process again is so fast that you create distance to the offender, and it's even more easy to do it.

David Cayley

The political matrix of these changes, in Nils Christie's view, is the decline of the welfare state, using that term in a broad sense. This decline reflects a broken moral consensus and not just a shortage of public money. It is particularly striking in Scandinavia where the standard for social-democratic government was set. Today, Christie

characterizes the situation of Norway and the other Nordic countries as welfare states at the brink.

Nils Christie

The problem is that it is quite obvious we cannot continue what so often is called "development," and we get a large population that is called "unemployed," which is an idiotic term. It means of course they are working but they are working without pay for what they are doing. So a basic dilemma is if we will be able to redistribute the resources so that people can keep their dignity and get something for what they are doing, or if they will continue the present system with an increasing, steadily increasing amount of, again the idiotic term, unemployment, and that group of unemployed will be difficult to govern, because this is really a sociological law that if you want to control people or if you want people to control themselves, according to some sort of standard, these people must have something to lose and if the important thing is to create dignity, our really important thing is seen as work and if that work doesn't exist, of course these people are more difficult to govern. And if in addition you have ideals of a material well-being or material belongings as indicators on status, then again you are in trouble. And, thirdly, if your social system is of the sort where you can't even gain social capital, where if you don't know each other, so you don't even have honour, you are again difficult to govern, and the temptation in this situation to use physical means for curtailing the lower classes, the dangerous classes, will be a very great one. I think that it's necessary to look into the situation of the old caste societies. Our lower-lower class has a sort of character of being a special caste, is a caste society, but there are even more handicapped than some of the lower castes, of India, for example, because they have nothing to provide except jobs for those who take of them. So that's the only need for them, as clients. And if this continues, again, the temptation to really keep them as clients would be very, very great. And then we can see, in my society at least, we can see that the—I mean, we're very proud of our welfare state—but it has been a very, very shaky state recently. The offices for social service to the people in this little capital of Norway, they're very difficult to get access to, they have private police watching the doors so the clients will behave, you have to make appointments, often weeks beforehand, to come there. We are not only getting a recession but we are getting a repetition of conditions in between the wars, and then the temptation will be great to

try to get control by fiscal means, and the instrument in this control is given us, not intentionally but it has become that way, in the drug policy. That drug policy is now playing a more and more important part when it comes to the control of the lower classes.

David Cayley

How this control works is a subject which Nils Christie will explore in more details in the next program in this series. One example, which he discusses in his book, is the extraordinary number of people currently being returned to prison after release on probation or parole in the state of California. Fifteen years ago in that state parolees rarely went back to prison on their current sentence. Then two things happened. The first was that parole and probation officers sensed a change in the political winds, shifted their emphasis from rehabilitation to control, and won the right to use guns in their work. The second was the institution of sophisticated drug testing. By 1987, nearly half of those released on parole or probation had been returned to prison. Drugs were the agency of control. In this program Nils Christie has spoken of various contemporary tendencies which make prisons into a normal and unregarded feature of our social landscape, create an underclass of dangerous strangers exempt from fellow feeling, and anesthetize citizens to the pain which is mechanically meted out to these strangers, in their name, by computerized courts. More than crime, he fears the potentially totalitarian consequences of the current fight against crime, and he wonders whether every step on this path will seem so compellingly rational that few will notice that it is faith in reason which engenders these monsters in the first place.

Nils Christie

It is not more than one or two months ago I found a little note in our *Correctional Digest* that is published in the United States, which in a way was the most extreme example of utility thinking when it comes to the underclass and what you can do about the underclass in a modern society. There was a report from Taiwan that thirteen persons in Taiwan had been sentenced to death and they had been executed while they were in such a machinery that keep your lung and heart moving. What is the word?

David Cayley

Respirator.

Nils Christie

In a respirator. They were executed while in respirators, so that their body parts should be unhurt be moved into other bodies, and this is of course very rational. Why should it not be? Why shouldn't we use people? There are several thousand on waiting lists in the United States. Why should they not be used for the good purpose of giving life to other people if you live in a rational society? You could say, well, doctors shouldn't say yes. Why shouldn't doctors say yes? They need the kidneys. They'd say judge that shouldn't say yes. Why shouldn't judge say yes, if it was a law that said it was okay? There's no hope in professionals protecting us against it. So maybe the only hope is some sort of gut feeling somewhere. We're back to how then to create social situations so that the ordinary animal-reflective devices, again in Hanna Arendt's words, how they could be activated to protect us against the rational utility thinking that you can find in these areas.

David Cayley

Why not take the organs of these executed people?

Nils Christie

Yes, that is exactly the question. That was what the people in Taiwan thought, it would be such a waste, it was so good to know they were used and something good comes out of this mess. But still most of us, or some of us maybe I should say, that has some gut reactions say, this ought just not to be done, and how shall we preserve such instinctual reaction against the most superb utility thinking we can find?

David Cayley

How do you answer that question? What is the answer for the question, why not do this?

Nils Christie

You know, I would just say it is indecent. There are limits of the same category as I think it is limits how we could use a funeral. Can you think of anything more wasteful than a funeral? Here we are gathered, emotionally upset, filled with sorrow, we would like so much to have the person there, and then this case of lost opportunities. Why don't we put that big signs that if you had not smoked, we wouldn't have been here now? Why don't you do that? Wouldn't that be a good thing for the health authorities to do?

Lister Sinclair

On *Ideas*, you've been listening to Part 1 of "Crime Control as Industry," a three-part series on the ideas of Norwegian criminologist Nils Christie at the University of Oslo. The series continues next week at this time with a program about how rates of imprisonment are shaped by culture as much as by rates of crime. Tonight's program was written and presented by David Cayley. Technical production was by Lorne Tulk, the production assistants were Gail Brownelle and Liz Nagy. [?] A transcript of tonight's program is available for five dollars, or fifteen dollars for the full three-part series. Write to *Ideas* Transcripts, "Crime Control," Box 500, Station A, Toronto M5W 1E6. Please tell us whether you want Part 1 only or the entire series, and be prepared to wait about two months from the completion of the series for the delivery of your transcript. Two books by David Cayley, *Ivan Illich in Conversation* and *Northrop Fry in Conversation*, are now available in bookstores. The publisher is House of Anansi Press. The executive producer of *Ideas* is Bernie Lucht, and I'm Lister Sinclair. Goodnight.

Transcription by Hedy Muysson.

Lister Sinclair

Good evening, I'm Lister Sinclair and this is *Ideas*. In this program we present the second of three conversations with Norwegian criminologist Nils Christie at the University of Oslo. Professor Christie has just published a new book called *Crime Control as Industry*, which warns against excessive reliance on prisons as a means of social control. In this book, he points to the sky-rocketing rate of imprisonment in the United States, where there are currently over a million people in jails, four times as many as there were twenty years ago. And he warns that other Western countries whose rates of imprisonment have so far edged up much more slowly may eventually be tempted to follow the American lead. Unemployment is growing and the sense of moral community in many national societies is breaking down. The war on crime, like any other war, provides jobs, stimulates investment in the industries which build and supply prisons, and promises at least momentary safety against those trapped in the vicious circle of social exclusion. Dangerous because they are unwanted, unwanted because they are dangerous. Under these circumstances, Christie says, there is a strong temptation to accept the warehousing of growing numbers of marginal people in prisons. The control industry has no interest in its own abolition, and increasing social inequality can only inflame the fears on which it feeds. That, briefly, was the argument that Nils Christie presented in the first program of this series. Tonight's program explores ways in which he thinks that states can get out of this bind by recognizing that they have moral choices to make, both about what shall be considered crime in the first place and about what should be done about it. The series is written and presented by David Cayley.

David Cayley

During the 1980s, the Soviet Union, as it then was, cut its rate of imprisonment in half. The American rate during the same period doubled. Does this mean that during this period crime in the USSR was reduced by half, or that it doubled in the U.S.? Not at all. In fact, the number of reported crimes in the United States actually fell in the 1980s: there were less murders in 1990 than there had been in 1980 and less burglaries as well. What had changed was penal policy, not the rate of crime. In his book *Crime Control as Industry*, Nils Christie points to numbers of other examples of the same thing. Historically, he says, rates of crime and rates of

imprisonment have varied quite independently. This already shatters the common assumption of a natural fit between punishment and crime, but Nils Christie goes farther and suggests that crime itself is a relative notion. I recently spent a couple of days in recorded conversation with Nils Christie and he began one of these conversations by pointing to this relativity.

Nils Christie

My basic point of departure is that crime doesn't exist. To understand the phenomena you have to take as your point of departure an act and then that act can be classified within various frameworks, and one type of classification is the legal one and in certain situations it is the natural one, but in others it is very unnatural. So a theft is not a theft. A theft is an act and then in certain situations it is natural to see it as a criminal activity. But the more you know the parties in detail and the more you know about them and the more they live in a communal setting where everybody knows a lot about them, the less are the chances that at least minor types of these on a scale of severity will be seen as criminal. The example I first come across was the study of a sort of sheriff system we have here in the country of Norway where we had a very gifted student travelling from the one sheriff in one valley to the next and very typical of these sheriffs in the countryside is their insistence that they have no crime in their district, basically. But then this student of mine, she was a good observer and when she interviewed the sheriffs, she could hear the telephone ring and the sheriff called in his assistant and asked the assistant to go, let us say, down to the café, because maybe so-and-so in one of the farms had lost her purse and it was a need to find that purse, and the assistant didn't know exactly what the sheriff meant, so he took the car down to the café and there he found the purse and he brought the purse back to that lady and the purse was in the hands of a young man which was the son of that lady. But they never . . . here we go, we're into more possible [?] use of euphemism, they never called it "theft" and they never saw it as theft, because they didn't know so much about the social condition of that family and so the interpretation was quite a different one. The same with some theft of guns: it should have been a sort of cliff-hanger but it wasn't because they didn't know that this was Ulle, [?] who was a bit drunk and when he was drunk he wanted to steal weapons and it was to stop him and then bring the weapons back and bring Ulle home and then the whole thing was calmed down. These sheriffs

complained they had "a little crime," but there was crime committed by people outside of the valley. So, when foreigners come in, you don't have the social story, so then the act gets the meaning of being crime. But when you see it in the total context, then you know so much that the simplicity in the legal categories becomes overwhelming, so you will not use them. But then we are on the track of what brings up the crime figures in modern societies, and that is of course that we don't know each other well enough. So the acts will much faster get the definition of being crimes and thereby something will take place as usually takes place when crimes are committed.

David Cayley

What this something turns out to be is just as much up for grabs as the decision about what shall be called crime in the first place. Once a crime has been defined and acknowledged, it will never simply be excused, but the range of possible ways to make good the loss, punish the offender, and purge the bitter emotions still varies hugely from place to place and time to time. Even when imprisonment becomes the normal response to perceived crimes, the amount still has to be politically determined. Consequently, it too varies dramatically. Nils Christie's native Norway is a case in point. With the exception of the early nineteenth century, when Norway abandoned many corporal punishments and prison rates temporarily shot up, Norway has generally kept fewer prisoners than comparable countries with comparable rates of crime. In his book *Crime Control as Industry*, Christie tries to answer the question: Why does Norway have so few prisoners?

Nils Christie

I think old-fashioned sociology is important here to say that we have some sort of community, and a community where it, by several historical reasons, not were seen as decent to inflict a great amount of pain on members of that community. You were relatively close to people of another sort. In the old days I think it had something to do with the class structure, that the upper class who at that time run the penal system were by living conditions and its servants and helpers relatively close to other classes. Today it has something to do with the spirit in the legal community and also with some mechanisms where it's a nearly ritualistic meeting each year up in the mountains in Norway, arranged by an organization fighting for the decency within penal policy. If you so wish, I can tell you about it.

David Cayley

Mm-mm, mm-mm, do.

Nils Christie

Well, I could maybe first of all say that we have a situation in Norway where we have two thousand five hundred prisoners. That means fifty per hundred thousand, while you in Canada has hundred and ten per hundred thousand. So we have half of your prison population, two thousand five hundred prisoners, but we have four thousand prisoners waiting in queue. And this is the first element, I think. I'm fascinated by the reaction to this by many people abroad, because they cannot believe their own ears that we have people in queue for imprisonment. But I like it. It has been criticized and our prison authorities feel a bit embarrassed, but in a way it is a very good arrangement because it breaks with the stereotypes, how things are. The stereotype is that you catch the criminal and put him in prison, and then he is a sort of other being. But if he can be in queue, he's normalized. There's a queue for hospitals, a queue for social service, a queue for kindergarten, and a queue for coming into the movie and the theatre, the symphony orchestra *and* the prison. But why do we accept that it is a queue? Why don't we build more? Well, it has been a very tricky thing politically to get acceptance of building more, and this has to do with this: encounter or a ritual travel to the mountains. Every January there's a meeting in a hotel up in the mountains. There will come cars from the prisons, with prisoners, with guards. Some prisoners will come with their own cars or with a common bus up to the mountains; there will come some university people like me and like Thomas Mattisme, [?] who is a very central professor in arranging these meetings for several years; there will be journalists, there will be prison directors; all sorts of people. And during three days and nights we meet up in the mountains for very, very vivid discussions on criminal-policy questions and very, very lively nights discussing, some drinking, lots of talking on the same topics. You can find in the late evening a table with six or seven people and if you happen to know them, you will see that here is the director of one of the more stern prisons in Norway, here are some very, very sometimes famous criminal cases or persons who have committed severe offences—murder, espionage, robberies—sitting discussing, and then some ordinary people from universities or other circles sitting intensely discussing prison ...[?] or crime policy, or general political, or where

they want to walk on cross-country skiing around lunch the next day. The important thing in this is that it is impossible to preserve the image of the non-human being in these circumstances. You are forced into seeing that if it hadn't been for . . . the other person could have been me. So, the human qualities help to establish a sort of common acceptance on limits to penal policy would be my point. Netherland has very much of the same penal policy but there are certain other mechanisms behind. They have even less people in prison than we have in Norway and a major reason for that is that the penal establishment in the Netherlands had very bad experience of imprisonment during the war and were strong anti-prison in their views. They have equal amount of registered crime as Great Britain in Netherland; the curves, the trends are the same, but while England and Wales went to heaven with their prison figures, Netherland went completely down. They departed after the Second World War. And this again illustrates what we find again and again that it is not the level of crime in our society that decides the level of punishment, the level mentioned in the criminal statistics, but the criminal policy, the penal policy is related to some other deep fissures of that society.

David Cayley

And does this hold up historically too?

Nils Christie

As far as I can see it does. Typical for the Scandinavian development was that we had a peak of imprisonment where we had figures higher than you have in Canada today; we had that peak in 1840. But after that time it went down and down, until 1900, and then it has kept relatively stable, completely independent on the fantastic increase in the police statistics since the 1950s. This is against all folk belief, but when you go back and look into crime as an endless resource, you can understand why it is so.

David Cayley

So you have a situation where the population, public opinion, is responding as if crime were a natural category to which authorities are simply responding . . .

Nils Christie

Yeah.

David Cayley

. . . and an actual case, where it is continuously being constructed by authorities,

Nils Christie

Yes.

David Cayley

. . . who then use that folk belief to justify what they're doing.

Nils Christie

You're very good in explaining what I have in mind, so I accept that explanation. But you can also see how this sort of breakdown must [?] show the motivation for increased imprisonment. It's very important not to see the sort of sentencing processes at the receiving end, that they just had to act because the criminal has acted before. There are so many other alternatives and in civil societies it is then so important to try to regain ground for civil solutions. You can never meet any old-fashioned, close-knit society that use penal measures to a large extent because people, if they are relatively equal in status and close to each other and do not have authorities over, then they will be very careful with solving conflicts with power. They had to find a way of solving the conflicts, and then to find peaceful solutions. It's only when authority is strong, distant, and cannot be hurt by those punished hitting back, it's only then that you can find excesses as in modern states. So, if you really want to control power, you have to weaken that power.

David Cayley

Another feature that you point to in your book, which seems to apply both to the Netherlands and to Norway, is the power of elites who stand within their own tradition, who stand within their own understanding and are not subject to whims of public opinion therefore.

Nils Christie

You're so right and we could go back to the Eastern European experience, where I first got aware of this. In the office we are sitting now I had a Polish professor who we invited to tell about why did it increase so fantastically, the prison figures of Poland—it was under the oppressive years of Poland—because Poland was a country with such a good sociology before the Second World War. It was a Mecca for sociologists, and so many of them went to the United States later. They had also low

prison figures. But then, under the totalitarian regime, it increased tremendously. But they had forgotten to put a ban on their prison statistics, so we got aware of this. So we invited him to tell us, and he did. We had some troubles because we had another representative from the minister of justice in Warsaw, here, just at that same time, so we had to place her in the library and not tell her that he lectured here in the most elegant way, where he just pointed to this: that the old judges had gone and new had come, and the new . . . it was not so important that they were party members but they belonged to another social strata. It meant that they did not have the sort of broad connection to variation, as some of the old elite had. And this is difficult to say and you might easily end up in snobbishness and this has unpleasant side what I'm saying now, but what he was hinting at was that the old judges belonged to what they called the "intelligentsia" of Poland, and they had their connection to authors, to actors, to those working in the newspapers, those working with words, and often the bohemians, people who were in a way breaking down borders around and creating variation, showing the possibilities of variation. And if you know that from your own life or at least from your own circles, you have maybe a bit less difficulties in identification with those other in trouble. And they were kicked out and instead we got this new group of conformist party members, not because they read Lenin but because they were conformists, and they were vulnerable for also for political influence but, particularly, they were blind for variations in human life.

David Cayley

It interested me that in this part of your book you point to this. Some of the consequences of democratization after the sixties, what is always in Europe [?] called 1968 as having these perverse results. So, for example, democratization can mean more horizontal relationships, whereas in what seems to be a more hierarchically organized society you still have more vertical relationships . . .

Nils Christie

Exactly.

David Cayley

. . . even it's only the old judge who actually knows the family of the servants. But then, when you have prison guards who meet other prison guards who meet other

prison guards, you can have prison guards from thirteen countries meeting together but they're all prison guards.

Nils Christie

Yeah, it is a protection to feel relatively secure in your role and to be ni...[?]ed in to people of the most varied experiences, and I really get scared when this is lost first to people who lack this background and later to a sort of computerized sentencing system, which will be the sort of last stage in this process.

David Cayley

Computerized sentencing is already in an accomplished fact in the United States, the country which serves Nils Christie as a negative example throughout his book *Crime Control as Industry*. There, in 1984, Congress enacted the Sentencing Reform Act. The act created a federal sentencing commission, which in turn produced a sentencing table. This table correlates punishments with crimes and gives judges detailed instructions on how to find the correct sentence. So, for example, if a house has been robbed, the judge can look up "burglary of a residence" and discover that the basic offence level is seventeen. Then he adjusts for the specific offence characteristics: if the offence involved more than minimal planning, the offence level is to be increased by one; if drugs were involved, by another one; dangerous weapons advance the level by two, and so on, until the precise sentence is reached. Nils Christie considers this procedure a travesty of judicial independence, but he does recognize that a certain idealism lay behind this attempt to prescribe what the Congress called "appropriate sentences" in its instructions to the sentencing commission.

Nils Christie

I think in many ways it was a lot of reformatory idealism behind this. It was found that the old idea of treating criminals out of crime didn't work and that petty criminals—they had done relatively limited harm to their surroundings—that these were serving exceptionally long sentences, particularly if some experts said they were not ready yet, "they were not treated," and any lawyer could see the sort of possibilities for injustices in a treatment ideology. But, as I also would like to underline, in that treatment ideology, it was still a sort of element of concern, officially at least—you did it to help the offender, to stop it, it was a help to society, but it was also good for the offender to be treated in this way. But then one observed, of course, that it was a lot of talk and little

reality. They were not placed in hospitals, they were in prisons; they were suffering extraordinarily because they didn't know when they should come out. So we have to get more justice into the system. And then it is—I mean, mostly the theory is so simple that you can't believe it when you really start to take away the beautiful words—then they try to find another criteria for having people in prison and then they said, they went to the other extreme, and said, now we can't think of treatment and his social situation and all that, we have to be just; to be just we have to look into the harm he has done, how bad was it? But as we all know, the same act is never the same act. How can we compare theft done by a hungry man with theft done by a rich man? But the legal construction wouldn't allow that difference because then you could create differences. So theft is a theft, and theft then has to be in a way forced into very narrow categories—theft, let us say, a theft of something valued three thousand dollars, then you deserve X months of imprisonment, and if you have used a gun, you add some extra months, but in a very, very specific table. And then, in addition, you could say, if he had done it before three times, then you add according to some other specification exactly a new amount of imprisonment. And then you can, in a way, operate with a conception of justice that equal cases get equal punishment. And this is what is done now in the United States, and they have such a fantastic, simplistic view of what is a just system, but then justice is defined as equality in the act carried out. Therefore, justice is dead. [?]

David Cayley

So in the United States today, you're saying, there are no more judges; there are just technicians who run courts and who know the rules for running courts and who can look up in the table what the proper sentence is at the end.

Nils Christie

When it comes to the meting out of the sentence, this is completely correct, and I don't understand why they have the judge to do this job because a computer technician would do it much more sort of reliable, and the whole system is based on this simplicity thinking, and then I have to add it's even worse because in this simplistic thinking is open for all sorts of political pressure, because if you change the standards in the table, and you can do that very easily, then the whole group of criminals will come worse or ...[?] better off. But, as we know, the

political process, it is not one of leniency; those talking about this would not be those who would say we should reduce the table, so it is a steady pressure in getting more and more severe sentences, and this pressure is so easy to transform into the legal pattern of that one single table. And this then, in contrast to the classical legal ideal where the judge meets the offender, meet him ...[?], meet him when the two parties tell about his guilt and then not only the act he has done but all the reasons he did it, put it into a broad social context so that it really is something to quarrel about. And you know, the more they put in of informations, the more difficult it is to sentence. The act is converted from that simplistic description into something that really starts to get social meaning, and that makes it very, very difficult to be the person deciding on pain.

David Cayley

The philosophy behind strict sentencing tables is sometimes called "just desserts." Many of those who agitated for reforms based on this philosophy imagined, and hoped, that it would result in a reduction of sentences. But in Nils Christie's judgement they failed to foresee the perverse consequences of this effort to "automate justice," as one dissenting judge called it. One of these consequences was that the power removed from judges simply ended up in other hands.

Nils Christie

Much more of the power over the system is placed among the politicians, who have a direct influence on what goes on. And you could of course say that this . . . isn't that democratic? Yes, if it had been a neighbourhood court in an African village, it would be very democratic, because then you would act with the responsibility and the knowledge of the social system you were deciding on, giving laws for, giving rules for. But in this case, of course, it is people very, very far from the segments of the population that really are hit by these decisions. And then the politicians are under great influence of particular pressure groups in that particular society. So I think it is a general experience that in our type of society that there are problems by letting the politicians have a detailed hand on penal law, that you need some sort of protected body in between. And then we come into the paradoxical situation that maybe—you could use the stereotype of the sort of a bit upper-class, arrogant British judge—maybe that is an institution with greater protection of the

criminal than the politician, because the arrogant British judge has the arrogance of having the power and knowing that he has the power to decide, but also that he has the responsibility and he can't escape the concrete case. He can't escape slowly to see that there is a human person coming up here. His results might also be terrible and he might not understand it and his class is an other than the other person's class, etc., but he is nonetheless forced to see a human being, and we ought to give him that freedom of decision, so it is of some use that he is that close to the person he is to sentence; while the politician is far away under the influence of special segments of the population and can then very easily decide what ought to happen in sort of very, very simplified statements, as the law always will be, but with no sense for the exception. And when you go close to all sorts of people, they are . . . we are all exceptions. And I feel extremely unhappy both because I'm from the United States but also because I'm afraid of the contaminational effect of what goes on in United States. I have this morning been at a meeting on drug policy, and again and again I meet the police telling me what I'm telling the public in this meeting, how lenient we are here compared to the United States. We have an old tradition of looking with high regard to what happens in the United States. It influences us, it puts standards for decency, and when they are now running completely wild, it's a very dangerous situation for the other systems to survive the pressure, to survive the frame of reference created by the extreme development in the American penal system.

David Cayley

Justice, by long tradition, requires judgement. That is why justice, conventionally, is pictured holding a sword in one hand and a scale is in the other. The sword represents the power of discrimination and discernment; the scales: conflicting interpretations which must be weighed and balanced. It is precisely this aspect of justice which Nils Christie feels is being lost to the prefabricated interpretations of sentencing tables. The Institute of Criminology in which Nils Christie works is part of the faculty of law at the University of Oslo. Amongst the law professors and law students there, he says he sees the same tendencies now evident in more extreme forms in American jurisprudence. They tend to see the law, he says, in functional rather than ethical or cultural terms.

Nils Christie

I try to tell the students, don't hesitate to try to cultivate your core activity, namely to take a perception of a great amount of values and try to open for an evaluation of these values against each other and don't try to be so useful for your society; try to be completely useless and be oriented towards balancing your values. And this is the nearly paradoxical situation that we have come to at this institute where I'm now working that in many ways the law professors always stretch [?] to be useful for society, and the sociologists and social research people here are again and again taking the point of view of value preservation and ethical dilemmas, and this I think is very, very characteristic of what happens with the legal institution, that in a way it is eaten away by demands of utility. And who should then take care of the basic weighting of values? We have . . . the few of us here then who are from other sciences, we have been pushed to take over what some of the law professors have left, but it can be a question of how long we will be allowed to do that, and the social sciences immediately, when they get authority in society, they very often lose this goal and also try to become useful for their society and go into the ...[?] of functionalistic thinking and utility thinking, instead of being at the service of finding out, in the service of trying to carving out all the available alternatives, in the service of understanding. But if you are in the service of understanding, you are not in the service of the state, because the state will feel all the time they are in the force of having to make decisions and you have to help us to give us the arguments, bring clear-cut decisions, and that ought not to be. Now I take a moral position. What we have to do at the university, we should be critical, reflecting, and it should not be our primary purpose to take care of the state need. For me as a university person, I think it is important to find what's the institution I'm working in and it's important to try to defend the peculiarities of that institution and to find out, this is not a church, it's not a factory, it is not a publication, a journal, it is a peculiar institution with the privilege to work with words, to work with culture, to try to find out, to conceptualize—this is our privilege and our freedom to do. And this special institution functions, in my opinion, very well if it is given some . . . if it is not organized completely as these other organizations. There are some good reasons not to organize universities as if they were factories or churches. You should take good care of the differences in society and try, in a way, not to make everything similar but let them blossom in their different, peculiar characters.

David Cayley

Next week, in the final program of this series, Nils Christie will return in more depth to some of the questions he has just touched on here. He will explore alternatives to the ever-spreading industry of crime control. He will explain how the state often steals conflict from those who are actually a party to them; and he will talk about why he thinks that law ought to be an expressive cultural institution and not just an engine of social control. In what remains of tonight's program, the conversation turns to yet another way in which the crime control industry is spreading, through the so-called war on drugs. Drugs, in Nils Christie's view, have at least two important social functions: they serve as an explanation of social disorder and at the same time as a means of managing it. In the United States, for example, drug offences today account for a majority of the prison population. Control of drugs, Christie says simply, means control of the lower classes.

Nils Christie

I have some five years ago written a book with a Finnish colleague, who is a professional alcohol research [?] in Helsinki. We called the book *Suitable Enemies*, and of course the point is that the world is filled with the possible drugs. We have alcohol, we have tobacco, we have coffee and we have tea, and we have all sorts of glues, etc., but then the attention given to a slight selection of drugs is not quite by accident and that the extreme fight against these drugs have certain costs. And we in this book are not sort of hedonistic liberals saying, it's okay, the drugs; we—or I can talk for myself—I think that alcohol is a rather complicated substance that as a Norwegian I'm rather thankful that there are certain regulations for me with regard to that drug. I think it is absolutely silly that tobacco is the most easily available commodity in my country. I'm very happy that nainamid [?] [dynamite?] is restricted. I accept a lot of regulations all over and I would also accept a lot of regulations with all those substances that they are seen as criminal to use and particularly criminal to import and so on, but it is a sort of overkill with regard to these drugs and this overkill has lots of bad consequences. The worst thing with the drug war in my society has been that we have let alcohol problems grow without attention. That's the worst of all. We have a sort of attitude now that as long my son keep away from drugs then nothing matters, we accept he can be deadly drunk and thank God that he hasn't used

marijuana or things that might have been worse. So as under the cover of the activity against a few selected drugs of no particular economic interest for the establishment and which are far from the many ordinary people, the system has gone completely . . . and we have, within a twenty-year period, we increased our punishment from six months as the maximum to today twenty-one years, and twenty-one years is the most you can get—you can kill as many you want in my country and you can't get more than twenty-one years of imprisonment, but you can get it for drugs. We [?] are worse than any other country with regard to extremely stern punishments and with a loss of guarantees against abuses in the whole legal procedure. But also very, very complicated for the whole social policy is that drug is such a beautiful explanation. We live in the best of all welfare states and still some people look miserable. I'm often thinking of this when I walk down here to the university and I see drug people around and a lot of them were just around the royal castle in the old days and there our old prime minister for the labour party, a real idealistic man, living his whole life also when he was a prime minister in a little apartment on the east end of Oslo, passing these people. I mean, what's wrong? Something hasn't been perfect here. It was an enormous, aggressive provocation, it's a true possible explanation, it was a system error, something wrong still in the society of the social democrats, or the drugs are so deadly dangerous that if you touch them, you're lost. And it was easy to think that that explanation was the best one, and that explanation is some of the danger in the drugs, that you don't see the fundamental problems behind. And then, unintentionally, I underline *unintentionally*, this has now been the tool for the control of the lower classes, just as they were controlled through alcohol earlier. In this case, it is illegal even to use the stuff everywhere and it's illegal to own it, illegal to import it, and no decent people would touch it, so it's so easy to take them, and since these drugs are used in wide circles, and probably more widely used by unemployed and people bad off than by others, you can here take a lot of people in on drugs. And it's easy to control if you have used them through these new technical devices, so you get such a . . . do you call it a lever, get something you can grab them into and get total control.

David Cayley

How do you explain that people do use them under these very, very risky conditions?

Nils Christie

Well, first of all, I must say that most people who use drugs in my country, they do also use alcohol in an overwhelming extent. So they use drugs in addition, they use everything. In addition comes [?] that some people get more attached to these drugs also, and this attachment is to some extent explainable in the propaganda against the stuffs. We are told, the whole population again and again, and doctors are a primary source for this, that these drugs are so overwhelmingly strong so you can't get away from them, and the same way as the prime minister, drugs was a good explanation to him for the misery he saw, drugs are a good explanation to drug users also for the misery they are in. It isn't only drugs, a lot of protest [?] and troubles. It doesn't make it better to use drugs, but it is lots of other things also. And together, this increases the sort of strength of drugs, the belief that they are that strong. We know, of course, in reality, a lot of heavy drug users at least they take intervals where they don't use drugs because they want to come up on another level again, or just life conditions make them to stop ...[?] a considerable amount also, and that in death due to the drugs, partly again due to the drug policy, which makes clean drugs difficult available, which makes it a need for sharing needles and all that. So I do not argue that drugs are not without danger, but I argue for a considerable reduction in anxiety level and to try to then have a more sober drug policy in my country.

David Cayley

When you speak of drugs as a means of control, you're saying also that they become a cover under which useless people can be imprisoned.

Nils Christie

Yeah, yeah. But I do not work with this sort of hypothesis of sort of conspiracy that this is the reason we have the drug policy. I think the drug policy is a sort of serious moral panic. The law makers believed what they were doing, but it was easy to do it since it was not their drugs and it was not their people, but it coincided also with another phenomena, namely that the power balance between grownups and children have changed in modern society, which have added fuel to the panic. In the old days, you had much larger number of children and what did that mean? It meant that a lot of these children controlled each other. Today, parents are in a much weaker position because the kids are not in the family, are

not controlling each other. The whole of the control is on the parents at the same time as there are lots of arrangements that bring the kids out of the family. They can survive outside, they couldn't before. So parents or grownups have lost control and this happened at the same time as the drugs arrived. So a lot of desperate, lonely parents claim that this is a new situation, it must be the drugs. It is the social situation where they are in trouble, not only the drugs, and that would have been in trouble with liquor as well, but it's so easy since two things happens at the same time, then to say this is because of the drugs. I think it is the general changes in the population that is behind here and make parents desperate. And I understand that despair. It's again back then to the need for community.

Lister Sinclair

On *Ideas*, you've been listening to part two of "Crime Control as Industry," a series of three conversations with Norwegian criminologist Nils Christie at the University of Oslo. The series is written and presented by David Cayley and concludes next week at this time. Professor Christie's latest book, which is indeed called *Crime Control as Industry*, has just been published by Rutledge and is available in book stores. Technical production was by Lorne Tulk; production assistants were Gail Brownell and Liz Nagy. A transcript of tonight's program is available for five dollars or fifteen dollars for the series. Write to *Ideas* Transcripts, "Crime Control," Box 500, Station A, Toronto M5W 1E6. If you want an individual program, tell us the date, and please be prepared to wait as much as two months from the completion of the series for delivery. Two books by David Cayley are now available in book stores. They're called *Ivan Illich in Conversation* and *Northrop Fry in Conversation* and they both began life as *Ideas* series. The publisher is House of Anansi Press. The executive producer of *Ideas* is Bernie Lucht, and I'm Lister Sinclair. Goodnight.

Transcription by Hedy Muysson.

Lister Sinclair

Good evening, I'm Lister Sinclair and this is *Ideas*. This program concludes a three-part series on the ideas of Norwegian criminologist Nils Christie from the University of Oslo. It's called "Crime Control as Industry," after a new book by Professor Christie which warns against the spread of a system of crime control in which ethical questions are suppressed and efficient management supplants justice. Taking as his starting point the extraordinary increase in the number of prisoners in the United States—there are now more than a million Americans in prisons, four times as many as there were twenty years ago—Professor Christie asks whether this tendency might spread to other countries and large concentrations of prisoners come to be seen as a normal part of the social landscape. Unemployment is growing, the ideals of the welfare state no longer command the consensus they once did, and the crime-control industry produces jobs, investment, and social control. Under these circumstances, he wonders, won't citizens be tempted simply to accept the warehousing of unwanted people in prisons and duck the ethical issues involved in inflicting such pain. In last week's program, Nils Christie demonstrated that the number of prisoners a given country holds is not just a reaction to crime, it also reflects the moral and intellectual climate of that country. His native Norway, for example, has less imprisonment without less crime than many comparable countries, and he argued for an independent judiciary, able to balance the state's interests in the efficient management of crime against the ethical questions involved in the administration of justice. In this final program he talks about alternatives to imprisonment, about why justice is the responsibility of all citizens, about law as a cultural institution, and about his reasons for describing imprisonment plainly as the purposeful infliction of pain. "Crime Control as Industry" is written and presented by David Cayley.

David Cayley

In 1981, Nils Christie wrote, in English, a work called *Limits to Pain*. By that time he had written a number of books in Norwegian, but an unhappy experience with translation had persuaded him, in this new work, to address English readers directly. This is how he began that book: "Imposing punishment within the institution of law," he says, "means inflicting pain, intended as pain. This is incompatible with esteemed virtues, like kindness and forgiveness, but this incompatibility is usually hidden

by rationalizations or euphemisms. Sometimes," he continues, "pain is disguised as treatment, but this attempt to manipulate the offender is unreliable and often produces new injustices. At other times, punishment is accounted just when it is made to fit the crime. But attempts to ascribe a just measure of pain to each criminal act result in rigidity and insensitivity. These are the two polls," he says, "between which penal theory and practice usually oscillate. My own view," he concludes, "is that the time is now ripe to bring these oscillatory moves to an end by describing their futility and by taking a moral stand in favour of creating severe restrictions on the use of man-made pain as a means of social control." This view also animates Nils Christie's current book, *Crime Control as Industry*. How this view came to be and its implications for the administration of criminal justice are the themes of tonight's program. Nils Christie is a professor at the University of Oslo, which forms one side of a great public square in the centre of that city; on the other sides are the parliament, the royal palace and the national theatre, fronted by an imposing statue of Henrik Ibsen. I visited him there recently and recorded several conversations with him in his office at the Institute of Criminology. The institute is part of the faculty of law, and this situation, he told me, by requiring him to address his law colleagues, and not just his fellow sociologists, had fostered in him habits of clarity and plain speaking.

Nils Christie

You have to take away all sorts of mystifications, a sort of clothing that are customary within your specific science, and say it plainly, because lawyers are not interested in sophisticated sociological terminology. So they forced me to talk in plain language. They continued to talk their legalistic language, so we had also to understand that, but we were forced out of this special language of sociology. And I'm very happy that that was because I don't think I need that special language for any problem of the type I would like to work with.

David Cayley

Was the resistance of your law colleagues limited to the language of sociology or, do you think, in a way also to the approach?

Nils Christie

No, I think they rather enjoyed that approach. I felt great acceptance from the faculty of law. Of course, I've been a terrible disappointment, because they wanted a

criminologist as one who could be in a helping position to explain crime and then they could continue as usual, but we haven't been very helpful in explaining crime in that we got soon more interested in explaining the system of sanction, to understand that system rather than crime. And they have also troubles with a lot of the critique coming from my colleagues and from me. In the Norwegian society the faculty of law has always been very . . . it has been an important faculty; it's a useful faculty seen from the state point of view—they give lots of advice to those who run the country. While I have been in the position that people very rarely have asked for my views and, when I come with my views, they will find it very often impractical or that I directly say things that makes it more complicated to run the country. For example, the difference between males and females: it is quite clear that a lot in the upbringing of females gives protection against acts that later are seen as criminal, so a good preventive device would be to bring up boys more like girls. It's obvious, but it's not very practical if it be seen from authorities' point of view, even though I don't think it is so terribly impractical. It should give us food for thought that maybe some of the criminal excesses have to do with the training into masculinity. Another simple statement would be that nearly all people in prison are very poor, so maybe you should see to it that people were not that poor, that they were not poverty-stricken. Again, you can see that that advice is not easy to convert into action. And then a third example would be this belief in treatment. If the whole system of sanction is seen as not giving away intended pain but as measures with the intention of helping those receiving these measures, it simplifies the task. So to deliver pain under the disguise of being treatment is very much more comfortable to the judge. We are also troublemakers in the meaning that we are claiming that the law people tend to be too close to the state, so close that I forget some of the important luggage I [they?] should have in respectful values, in balancing values, and see to it that justice was taken care of, and justice and management are not always in peace to each other. So, since the law people, particularly penal law, has been so close to the administrative perspective, they tend to be too willing to be assistants in the state's control of deviants. And in this situation it was, in a way, an empty chair—nobody took care of this balance of values and we were still very close to those who were supposed to take care. So, paradoxically, I think, we have ended up—the social scientists among us here at the faculty of law of the University of Oslo—we have ended up with again and

again pointing out ethical questions, while the law people have to a large extent become managerial in their thinking.

David Cayley

The university stands here facing the parliament and the palace and the national theatre—a very substantial institution. Was this tradition of service to the state that you mentioned amongst the law faculty typical of the rest of the university or did you have a tradition of independent scholarship and critical scholarship to take a stand within?

Nils Christie

Yes, I think the tradition is very much influenced by a Norwegian sociologist, Wilhelm Oberre. [?] He also was a member of this faculty of law, working in a way in opposition to the law tradition (he was a lawyer by education but a sociologist by experience), and he was also underlining the necessity of freedom vis-à-vis the social systems he described. ...[?] sort of literary style and I think the Norwegian sociology has been very much influenced by this, partly because we are provincial, in the meaning that we have not been tied to the international sociology to that terrible extent, that they have been important enough as reference groups, and then belonging to small societies—four million people in this country—you have to express yourself so that some other people can understand you. You can't write for your colleagues. So to a large extent we come into that tradition, to write so that ordinary people could understand us. But I have to add that this tradition is to a large extent gone now. The new breed of sociologists seem all to have been socialized into the American professional scientific style and write in ways that do not make me completely enthusiastic. I want to be understood and my advice to my students is that they should never write with their colleagues in mind, nor should they write to their best friends or eventually lawyers [?] because they are too close to them—they will often have a secret language—but they should write to some of their favourite relatives, favourite aunt, I try to suggest, because they will be interested enough to start reading, but then you have to keep them, and then you have to drop very much of your jargon.

David Cayley

And your decision to start writing in English, at the beginning of the eighties, when you did *Limits to Pain*, was to try and preserve this style but to address a bigger audience than you could in Norwegian? Is that right?

Nils Christie

Yes. I wanted, in a way, to get some of these ideas to some other people and it is so dissatisfactory to be translated. It was never my language, I couldn't stand it, so then I decided to do it in my own way. I think it has been very helpful when you have worked for a long time in a field to change language because it makes you able to perceive the phenomena again with new eyes, and in your struggle with carving out the words, the concepts, you had to think a lot and suddenly you get new experiences. Then you realize that maybe English do not have that language, or what sort of strange words do they really operate with, and you get a new perspective on what it is all about. And maybe, particularly, it is not so easy to cheat in a foreign language. I'm a relatively good writer in Norwegian and I can through formulations do it a bit too easy for myself, but in English I am handicapped and I have to be more serious. I try to say in one of these books that England has in a way lost their language by their imperialistic policy—they have forced us all to use that language—okay, then it's a part of me to use that language and I want to use it in my way, because our language—at least the language I write in Norwegian because much more . . . it will have shorter sentences, it will be, I think, more forceful than some other more academic English that I meet in many books may be a slight inheritance from the saga-style—short, very strong punctual. [?] So it's a rhythm I like very much to write in. It makes it again easier to follow, I think, for most people when the sentences are short and you can, in a way, rest in each sentence.

David Cayley

What were the experiences that led you to begin to speak so frankly to your law colleagues about pain, to say to them that, rather than giving service to criminals or giving treatment, they were in fact delivering pain, as you state very plainly in your writings?

Nils Christie

Yes, it had very much to do with the closeness to the receivers of that pain. I had, at a relatively early stage, to come close to people with severe alcohol problems, and

slowly I understood that their perception of what happened to them was extremely different from the perception the official society had on what happened. What the society called "treatment" and what the society in a way got away with by calling it treatment, that was perceived by the receiver as very severe punishments, and I made a systematic study of this. I went to prison before people were sentenced and asked them in a systematic way, what do you expect to get and how do you like it? What would you give yourself if you were your own judge? And then it turned out that thieves, they both understood what sort of sentence they would get and they would also give themselves, if they had happened to be the judge and knew all circumstances in the case, they would have given themselves the same sort of punishment that they expected they would get and, actually, that they in reality got. So they were realistic; they would sentence themselves to a bit less, just for old friendship, but by and large it was an acceptance of the punishment. But when I then interviewed people waiting for this special treatment, for people who were consuming liquor in the streets or were drunk in the streets, etc., and that at that time this treatment was a very, very harsh stay on the west coast, in a very closed institution, these people they were aware that this would happen to them but they found it extremely unjust. That was in between the two world wars and up to 1960, in particular. Then we abolished, as a result of this critique from me and from many others, this sort of treatment. It was clear that these skidrows who were put into institution called "treatment institutions," if you said in plain words what it was all about, then you could, in a way, not keep on with this arrangement. It was an arrangement only possible under the disguise, you call it, under the cover of being seen as something relatively neutral or pleasant or helpful to them. But then, of course, this very same tendency is also appearing in the core area of penal sections as well, because in the welfare—and after all, we are still belonging to that family of states—it is problematic to intentionally hurt people, so we don't like it. So even if we don't call it all treatment, we try to gloss over the brutal, painful character of what is going to happen with these people, and this becomes clear when it is torture or flogging or capital punishment; that is pain, we can see it. But of course imprisonment is also pain and even a [?] time is intended to hurt and then the dilemma is there: Should we save, in plain words, what it is, or should we use the more technical words? And then, in my view, it is the best thing to use the plain words. You are more inhibited when you know, when you can see what it

is about, than when you hide it in technicalities or in the legal language. It is therefore I have, very intentionally, used the word *pain*, and I use the terminology *prisoner*, while in the official terminology the person is called "an inmate." And I call the cell "a cell," while in the Norwegian terminology the guard is called "servant" and the cell is called "room." And the punishment cell is officially called "single room." So it's a sort of "single-room treatment" to be in that punishment cell. I think it is important to see what goes on to, in a way, limit the punishing hand into a realistic punishment, one that might be in accordance with the cultural norms of the society. But there is a danger in this and this danger is apparent in some movements in the international arena, mainly, if you say, very frankly, what is going on and if you take away the treatment ideology—and that treatment ideology has been taken away in very much of the prison discussions all over—then you might say, okay, if we are not treating and if we plainly are hurting, well, maybe it is acceptable to hurt, maybe only the brutality is left. So with the prison development in some countries, particularly the United States, I'm afraid that some of the brutality in the system now increases because even the pretension of treatment, the pretension of doing something that is taken away, so you can really . . . you can as well be nakedly brutal.

David Cayley

The fear that naked brutality will prove acceptable is the moral heart of Nils Christie's new book, *Crime Control as Industry*. As treatment was unmasked as unjust and ineffective, he says, it tended to be replaced by a philosophy sometimes called "just desserts." It holds that punishment is punishment and cannot justly be prolonged by the paternalistic claim that it is actually therapy. Punishment, instead, should be precisely tailored to the crime so that everyone knows where they stand and what they can expect. This philosophy is now embodied in the sentencing table produced by the federal sentencing commission in the United States. This table eliminates judicial discretion by specifying the appropriate sentence in advance. In Nils Christie's view, it has amplified political influence, disguised pain as even-handed justice, and over-simplified the application of law.

Nils Christie

You cannot look away from all the circumstances around a person who have acted and, if you press with idea of just dessert into a form where you can measure exactly the

badness of the act against the suffering he's supposed to receive, then you have left some old-fashioned humanistic tradition, and you have also constructed a social system that is very tempting and easy for parliamentarians or for the politicians to manipulate and you get situations, as in the United States where, in my view, the penal system has completely lost its brakes and where that country incarcerates such an enormous amount of its population that it comes close to calling it *gulags* of the Western type.

David Cayley

Nils Christie's book *Crime Control as Industry* has for its subtitle the question: Towards Gulags Western-style? Beginning from the axiom that crime in modern societies is an endless resource, it paints a frightening picture of what might happen if the control industry were given a free hand to exploit this resource, and it argues persuasively that this has already begun to happen in the U.S., where the war on drugs, deep-seated social divisions, and a lack of paid work have combined with a politically captive judiciary and the attractive business opportunities afforded by high-tech prisons to produce a rapid expansion of the control industry. All that limits and stands against this tendency, in Christie's view, are certain cultural inhibitions and, where it still exists, the belief that the actions of the state are the responsibility of all its citizens.

Nils Christie

In the final analysis, I have no other hope that a sort of belief in looking at conditions in a society as a cultural problem and looking at the system of crime control as one representing me and then asking both my own population and government—but also in the United States, since I feel very close to that ...[?] the United States, I mean—do we, do they feel that this is a picture we can live with? I try to use the picture of the national theatre, just across the street here, is in a way representing me and if it didn't exist, I would feel bad. It's not necessary, but we ought to have a national theatre. And there are things in my society that makes me shameful, and the prison population is one such indicator. At present, we have two thousand five hundred prisoners. We could of course have twenty-five thousand prisoners—it wouldn't change the crime situation very much, according to my views, but I wouldn't like to know we have it. But we could have two hundred and fifty thousand prisoners also, but I would

increasingly get unhappy; I would feel that they represented me. The *gulags* represent me, just as Henry Ibsen does. And this has not to be seen as a technical problem: it's a choice.

David Cayley

Does the existence of prisons and the prospect of imprisonment deter crime?

Nils Christie

It is a complicated question. I would say if, nothing happens, some more people could do something, but if what happens is three or six years of imprisonment, or six years or life, these are differences which probably have no consequences for the crime situation. So I can very well understand—and I feel it myself when crime is committed—that something ought to happen, there ought to be a ritual, someone ought to say, "Shame you," particularly if you bring the victim into it. The victim must have a chance to express his anger. So it's important not to stop it in the same way as I would say in a rational society we wouldn't stop having funeral rituals. I'm not against delivering blame, but how should you create a scale where these evil acts should be compensated with that particular piece of delivery of pain. I think it is an ideal to try to civilize this whole process, not necessarily put it into the framework of penal law but to the utmost extent put it into the framework of civil law; and talk about compensations, talking about doing wrong things right, correcting things, discussing it, and boards where you try to solve conflicts. The Mennonites in Canada are very interested in this and try to do this very much between offender and victims, and use as peaceful mechanisms as possible. But part of that is then to let the victim come into the process but also to let the offender expose himself in all his complexities as a human being, and not only as an actor of that one evil act. So, again, it's a question of humanism in this. We must be very, very careful not to adapt the penal process into modern management. Maybe we ought to have time, maybe the courts ought to be a bit old-fashioned and maybe we should let a maximum of consideration come into the court situation. It is not necessarily an ideal that justice is swift and simplified. You can see this in a lot of anthropological studies how court proceedings takes lots of time, but the time is important to give the participants a picture of what is happening.

David Cayley

Okay, so there's another side then to this sort of "Bleak House" picture of a fog-bound judicial system that moves at the speed of a snail?

Nils Christie

Yes. You have to erase this basic question: What sort of institution is the legal institution? Is it a part of management? Should it be organized as an efficient firm? Or should it be organized as a cultural institution, and how would you do it if it was a cultural institution? How to see to it that the population got sort of an impression of what happened, how to see to it that it was not occupied by the experts, in a way, stole the conflicts and made it into a technical thing, how to let the procedure really be one where the participant got a sort of personal responsibility for what happened.

David Cayley

When you say, make it a cultural institution, what that says to me is make it a vehicle for the primary concerns and emotions of the people involved. Is that more or less what you mean?

Nils Christie

Yes. Could it be anything more important than that those who had been hurt got a chance to say so and that those who had been hurting them would really listen, would really have to explain why they did it, and really hear what other people thought about it. That's the important part of the procedure. And then, what sort of suffering. It turns out a very, very common experience that when you have lay judges, and most systems have lay judges, they are very often extremely ...[?] very angry at offenders and they have strong views on what ought to happen to offenders, and then they are asked to participate in a court case, and they sit there for days and listen, get to hear everything in the case, and then they have to decide on the punishment, and then they come out with a not-very-angry punishment. And you ask them, well, aren't you so much in favour of pain? And they would say, well, in general, I am, but, you see, in this particular case, knowing all the circumstances, this was quite an exceptional case. And my point is, of course, that all cases are exceptional and, if you really see the total complication in cases, you build in some very strong inhibitions against delivering pain. And that's fine.

David Cayley

One of the trends particularly, I think, again visible in the United States that concerns you is the privatization.

Nils Christie

Yes.

David Cayley

Why is that? Or perhaps I should say first, what is it?

Nils Christie

Well, it is a privatization on several levels: first, for the state and federal system. Of course a lot of private firms deliver, they build prisons, they deliver commodities, etc.—that is one form of privatization; but the real issue is most sharply brought up on the private prison. Logan is an American who has published a book on it and then is up to now still a sort of minority phenomenon. There are a few private prisons in the United States and also some activity in England, but not very much, but it is the extreme case and therefore very interesting to follow. And it is a strong pressure in that direction. And in all these cases, both private delivery to the state and federal prisons and the private prison in itself, in my view, is a driving force towards expansion of the system. You get private lobbying for prisons and you get private capital interest in building more prisons, in expanding that system, and I think it is a good thing that it is not too easy to build instruments designed for pain. I am also against private prison by another reason mentioned earlier, namely, the cultural aspect. I want a prison where that particular society feels that it is my prison and it is also my responsibility, that prison. A private firm can, in a way, "It's not my mistake that they mismanaged that prison," but if it is a bad prison—and the same with the private police—I want it to be a state identification with the system. And with the police the argument for this can be seen from history, I think. I'm rather happy that certain of the state police systems in Nazi Germany, they went down with the political system. The Eastern German system, the STASI, [?] is discredited as the state is. ...[?] again back to the Nazi experience: some of these firms, they served [?] in cooperation with the concentration camps—they survived, the private firms survived and are open to service for the next regime. I think it is important that citizens should feel a personal responsibility for phenomena of so vital to the health of the nation as the penal system and the police system.

David Cayley

There are as yet few private prisons, but Nils Christie finds the prospect plausible because it dovetails so nicely with other popular prejudices. Private police already greatly outnumber public police forces. And if the administration of justice is essentially a managerial problem, then surely private firms would manage more efficiently.

Nils Christie

In our society, where production is seen as important and where free enterprise is seen as a solution to many problems, when there's institutional production—the factory or the big firm, the big shops—they are seen as model of how things ought to be done. And I think much of the critique directed towards the judiciary is a sort of critique that they should be efficient. But the courts are not an additional example of a firm: the courts have quite different tasks. They are there to open for conflict, to balance values, they are arrangements for ethical debates, not for production, so it is completely wrong to evaluate them according to standards for the evaluation of a Volvo or a Saab or Norwegian Hydro. And the same with the university. We are not a shoe factory, we cannot easily be evaluated because it isn't clear what we are for. The directors of universities and the administration try now more and more to regard us as if we were factories, but they are so wrong and they make our systems so much damage by treating us in that way. Even scientists try to talk in ways the now administrators like; they even try to quantify the importance—that is something called the "quotation index." They try to rate scientists according to how often they are quoted in scientific journals, and anybody with some experience knows that the number of quotations will very much depend if you are liked by your colleagues, how many do you have for dinner, and where do you place yourself in the social network. So it's a silly way of doing it. We do also try to adapt by having different salaries for different people: those performing most should get the highest salary. And again, I think it is such an attempt to adapt to business life that who could have the criteria for what is the best person. I think we should reserve ourselves against popularity games.

David Cayley

It's interesting in this way that courts are among the most archaic of institutions, that they . . . perhaps one of the few remaining institutions that still at least partially reveals its ritual origins, where oaths are still

administered, where aspects of tournament are still visible, which argues I think in the same direction that these were and should remain cultural expressions.

Nils Christie

Yes, but I'm glad you add "it ought to," because we can then see very, very strong tendencies in certain countries in the directions that the courts adapt to the managerial form. And this simplified sentencing system that are administered to these commissions with guidelines for sentencing in the United States, both at the federal level and within several other states, is a very alarming indicator that the courts are nearly of no importance anymore. The pictures you get from the television is of course that the court still exists in the old-fashioned way—sort of jury and all these pompous things, you can see them on television all the time—but in reality, it is not done like that and it is a source of great concern to me that that country which has this enormous increase in prison figures is at the same time then a country where the politicians are directly influencing the punishment process than in any other country I know of.

David Cayley

There can hardly be a more potent symbol of both patriarchy and the remains of aristocracy than the white male judge, and yet, you're saying on the other hand that, without a certain independence, things could be a lot worse, that justice under political control could be a far more frightening thing still. So in what direction, then, do solutions lie for you?

Nils Christie

Yes. My first point is this point of civilizing the process, get as much as possible pressed back to civil procedure. Rape is one example. The feminists are far from in agreement that this ought to go to the penal courts. Many feminists—and I agree completely—think it should be better going to the civil courts, where you claim compensation for rape rather than punishment. The sort of potentiality for rape is obvious, [?] and some endless supply of possible violence towards other people's body, so it doesn't help very much to put some few rapists in prison, particularly since after awhile they are bound to go out again. And here some catastrophes will always appear and we have no instrument to tell who will do it again. That is a very certain insight, that we are not good in predicting who will continue to be dangerous. So you

could then have the ethical view that, well, everybody who have raped should be in prison forever. Okay. If you do not share this view, you have to let them out again and then the point is to do it so decent as you can and also maybe to create the situation while they are in prison that is not deteriorating their situation. But, basically, so many other things we can do if we want to protect females. I mean, cry [?] centres, places where you can go when you feel that your man would be dangerous to you. They are of course of extreme importance in preventing violence against females. The question of liquor is a weighty one, at least in the Scandinavian culture when it comes to violence in the streets. And we know that population that particularly both and that as offenders and victims of violence that would be relatively young males who are relatively bad-off socially. So, again, then it's a question to give them something where they would have something to lose. So we know so much that could be done which is probably cheaper and more efficient than any penal measure in this area.

David Cayley

Nils Christie believes that there are acceptable alternatives in the field of criminal justice, and this belief distinguishes him from those criminologists who have tended to see all reforms as a potential strengthening of society's disciplinary grip on its members. Nils Christie is more hopeful.

Nils Christie

I do not share the pessimism among many of my colleagues when it comes to alternative sanctions. I think some of these sanctions out in the neighbourhood, [?] that you are in a way sentenced to do that sort of social work, or in the weekends take part in the building of that specific home, etc., that's a sanction with some hope. It is also this phenomena of boards for conflict solution, which in my view gives some hope. There are many examples of that around in the industrialized world, but they have not been put in systematic use, and I have my doubts also if it will actually amount to very much, but we do at least attempt to do it now in Norway. It has become obligatory from this year that all municipalities should have or have access to such a board; and the basic idea is that the police should give them cases, minor cases, of what police look upon as crime and ask the board to find a civil solution. That means to call in the victim and the offender and that the two should agree how the offender should make it good again. That's the basic principle. And if they so do,

then the police would drop the case. The problem, interesting enough, has been that the police is also fighting for its turf. They don't like to give cases away to the boards. Even if they claim they are overworked and overburdened, they don't like to let it go to these boards, they want to put it into the criminal courts. But now this seems to change and my hope and what I also try to argue for vis-à-vis the boards is that they should take some initiative themselves—the case is not owned by the police. If they are local, they will know about some local disturbance and they can try to find the solution before the police really finish the case and, if it is a good solution, the police will probably just accept that this was a good solution, and you then get rid of the case. I think it is a need for alternative thinking all the time, but we are, of course, left with the basic problem of the (in quotation mark) "dangerous class." So basically it is a question: should we establish, on the basis of our relative affluence, days where work didn't necessarily mean paid work and where people got some standard minimum income which made it possible to live a more decent life independent if any private or public organization gave you that work. Lots of countries struggle with this idea but I haven't seen it really realized.

David Cayley

But as long as civic dignity depends on paid work and there isn't enough paid work, you're saying, it's going to be a clean-up operation?

Nils Christie

It is a very, very heavy operation, but it is possible to dissolve the connection between work and reward, and monetary reward. We have that situation of course for artists, we have that situation to a large extent for other people within the cultural institution. I get my salary from the state but that salary has no consequence for the amount of work I put into my work. They could give me the half and I would continue working in the same way; they could give me the double, I would continue my work in the same way. So we have within certain sectors of society examples where we have at least reduced it and the trouble with this fixation between work and payment is of course that the quality of the work itself get out of attention and that we instead measure the work with the amount of money we get out of it. So you have in your English language this happy difference between *labour* and *work*, where labour is the heavy, if I've understood it right, and the not-so-pleasant activities. So I used to think

that we have to try to arrange the social system so that as many as possible of the activities are taken out of the sphere of labour and moved into being seen as work, or in the German form, *werk*, something very close to what is created, a creation.

David Cayley

Nils, thank you very much.

Nils Christie

It was a very great opportunity to be able to talk with really some length on these questions and I hope the Canadian way of doing this could spread to Europe.

Lister Sinclair

On *Ideas*, you've been listening to the last of the series of three conversations with Norwegian criminologist Nils Christie of the University of Oslo. Dr. Christie's new book, *Crime Control as Industry*, is published by Rutledge and is available in bookstores. The series was prepared and presented by David Cayley. Technical production was by Andrew Crump; production assistants were Gail Brownell and Liz Nagy. Two of David Cayley's earlier interviews for *Ideas* are now available in book form. The books are called *Ivan Illich in Conversation* and *Northrop Frye in Conversation*, and they're published by House of Anansi Press. The executive producer of *Ideas* is Bernie Lucht.

Transcription by Hedy Muysson.